86 - 1344

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

AHMED SROUR,

Petitioner,

—v.—

THE UNITED ARAB EMIRATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DAVID SETH MICHAELS
Route 203 at Beale Road
Spencertown, New York 12165
(518) 392-9150

Attorney for Petitioner

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Question Presented

Whether it was error to dismiss the complaint of a third country national alleging a breach of an employment contract by a foreign state, under the Foreign Sovereign Immunities Act, 18 U.S.C. Section 1602, et seq., on the ground that the employee had failed to establish that his action was based upon "commercial activity" by the foreign state, when it was the foreign state's obligation to produce evidence of immunity and no such evidence was produced.

Parties

Ahmed Srour and The United Arab Emirates.

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Other Authorities

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner Ahmed Srour respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit which affirmed a decision of the United States District Court for the Southern District of New York, dismissing petitioner's complaint under the Foreign Sovereign Immunities Act, 28 U.S.C. Section 1602, et seq.

Opinions Below

The summary judgment of the United States Court of Appeals for the Second Circuit was rendered on November 21, 1986. A copy of the judgment is annexed at Appendix 1. The memorandum opinion of the United States District Court for the Southern District of New

York was rendered on July 29, 1986. A copy of the memorandum is annexed at Appendix 4. Neither opinion has been reported.

Jurisdictional Statement

The judgment of the Court of Appeals was entered on Novmember 21, 1986. A copy of the judgment is annexed at Appendix 1.

The Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1).

Statutes Involved

Title 28, United States Code, Section 1603. Definitions

For the purposes of this chapter --...

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conductor particular transaction or act, rather than by reference to its purpose.

Title 28, United States Code, Section 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act (enacted Oct. 21, 1976) a foreign state shall be immune from the jurisdiction of the courts of the United States and of all the States except a provided in sections 1605 to 1607 of this chapter.

Title 28, United States Code, Section 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of the United States or of the States in any case-- ...

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States; ...

Statement of the Case

Petitioner is a legal resident of the United States of Lebanese

nationality (A.25) who was employed by the United Arab Emirates (hereinafter "Respondent") at its Mission in New York City for four and one half years until his employment was terminated in July, 1985. Petitioner was employed, pursuant to a written contract of employment with respondent, dated January 1, 1984, as a "researcher" (A.25). This contract specifically incorporated the provisions of respondent's "Local Employees System" (A.26), which applied solely to administrative employees (translators and clerks), general service employees (drivers, guards, cooks), and additional administrative employees like petitioner, who were appointed by special contracts. The "Local Employees System" provided that no position could be transferred without the prior approval of the Minister of Foreign Affairs (A.52-54).

On May 29, 1985, without notice

and without approval of the Minister of Foreign Affairs (A.13), petitioner was transferred from his "researcher" position to another position, for which petitioner had no training, as assistant to the head of the Economic and Social Department of the Mission (A.14). Thereafter, petitioner was terminated on July 11, 1985 (A.14, 55).

On April 25, 1986, petitioner filed the instant action against respondent. Alleging jurisdiction of the United States District Court for the Southern District of New York under 28 U.S.C. Section 1330, petitioner, describing his employment as that of "researcher" and "political adviser," claimed, inter alia, that respondent had breached the contract of employment. The complaint, however, did not provide a description of the specific services petitioner provided pursuant to the

contract. Rather, addressing the Foreign Sovereign Immunities Act (hereinafter, "FSIA"), 28 U.S.C. Sections 1602, et seq., petitioner's complaint simply alleged that the lawsuit was "based upon a commercial activity performed in the United States in New York City" (A.9). Thereafter, the summons and complaint were served upon the Foreign Minister of respondent in Abu Dabi by the Clerk of the United States District Court.

On June 25, 1986, respondent filed in lieu of an answer a motion for dismissal of the complaint based upon FSIA and the Diplomatic Immunity Act. The motion, which did not reveal the portion of the Federal Rules of Civil Procedure under which it was made, was accompanied solely by an attorney's affirmation and a memorandum of law. No affidavit or other document purporting to be made on personal knowledge was

submitted in support of the motion. Instead, the affirmation claimed among other things that the action was "barred" by FSIA because it was "not within the exceptions listed in the Act regarding commercial activities" (A.32). With regard to this claim, the affirmation stated only the following:

> A U.N. Mission is specifically and definetely (sic.) considered by the courts to be a diplomatic entity exempted from suit in U.S.A. The State of U.A.E. by conducting diplomatic activities by a Mission to U.N. is not engaged in commercial activities. Thus this action under FSIA is not maintainable and should be dismissed. (A.32).

Subsequently, on July 9, 1986, respondent filed an additional affirmation which claimed that the United States Department of State would "communicate directly with the Court" and suggest dismissal on grounds including the "interest of diplomatic relations" (A.35). The record

of this case, however, discloses no such communication to the Court. Instead, a letter from the Department of State was sent to the Clerk of the Court incorrectly claiming that service of process was not properly conducted.

In response to respondent's arguments, petitioner's attorney filed an "Affirmation and Memorandum in Response," which, advancing solely legal arguments and making no factual presentation, argued that the commercial activity underlying the case was the hiring, employing, and wrongful firing of petitioner (A.38).

Finally, respondent filed a reply affirmation (A.56) which purported to argue from various documents that "plaintiff is a member of U.A.E. Mission to U.N." (A.59) and that his was "an action by a diplomat against his Head of Mission to U.N. on a dispute relating to

his assignment" (A.61). Such an action, it was claimed, could not be maintained because of diplomatic and sovereign immunity and lack of jurisdiction (A.61). Annexed to the motion were a number of documents which included petitioner's name as a person attending or participating in various United Nations activities, but no document from a person with personal knowledge was provided to the District Court which described the nature of the services performed pursuant to petitioner's contract, and, significantly, none of the documents purported to show that petitioner was accredited as a diplomat.

On July 29, 1986, Judge Knapp granted the motion to dismiss. Noting that petitioner had alleged in his complaint that he had been employed as a "researcher" and "political adviser," Judge Knapp concluded that petitioner's

argument about the scope of "commercial activity" under 28 U.S.C. Section 1603(d) was "overly broad" (A.6). Although he had before him absolutely nothing which described on the basis of first hand knowledge petitioner's employment and the services for which he had been hired, Judge Knapp, in essence, determined that no material issue of fact existed about petitioner's employment, and he granted summary judgment for respondent. The Court wrote:

> Plaintiff's argument appears to be an overly broad construction of the Court of Appeals' formulation in Texas Trading v. Federal Republic of Nigeria (2d Cir. 1981) 647 F.2d 300 where it stated, "if the activity is one in which a private person could engage, it is not entitled to immunity." The "activity" here in question is more than just employment per se. It encompasses the specific type of employment in which plaintiff was engaged. See Arango v. Guzman Travel Advisors Corp. (5th Cir. 1980) 621 F.2d 1371, 1379 ("The focus of the exception to immunity recognized in 1605(a)(2)... is

on whether the particular conduct giving rise to the claim in question actually constitutes or is in connection with commercial activity.")

It is certainly possible for a foreign state to engage in employment contracts in this country which are both commercial and non-commercial in nature. Cf. Truck v. Pan American Health Organization (D.C.Cir. 1981) 668 F.2d 547 (claim arising from international health organization's supervision of its civil service personnel not commercial in nature.). We think it obvious that employment as a military attache at a diplomatic Mission would not be considered commercial, while employment as a stockbroker to invest for profit the funds of a foreign state in the New York Stock Exchange would be commercial. Likewise, plaintiff's work as a researcher and political adviser at defendant's Mission is not a commercial activity, but an essentially political form of employment peculiar to governments and therefore entitled to immunity. (A.7-8; emphasis added).

Accordingly, purporting to determine the "essence" of petitioner's employment although that had never been described in

papers before the District Court, Judge Knapp dismissed the complaint.

On appeal to the United States Court of Appeals for the Second Circuit, petitioner argued both that Judge Knapp had determined the "facts" of the case without resort to an appropriate inquiry about petitioner's employment and that nothing had been presented by respondent to demonstrate that FSIA barred petitioner's suit. Accordingly, petitioner requested a remand for an appropriate factual development of the dismissal motion.

On November 21, 1986, a panel of the United States Court of Appeals for the Second Circuit (Lumbard, Van Graafeiland, and Pierce, C.JJ.) affirmed in a summary order. The Court of Appeals did not discuss the lack of factual submissions to support summary judgment and upheld Judge Knapp's views both that

it was petitioner's obligation to establish that the case involved commercial activity and that the record supported a determination that petitioner's employment was not "commercial":

> Appellant alleges that this case falls within the commercial activity exception and that the district court erroneously focused on the activities of the plaintiff rather than considering whether the activities of the sovereign constituted commercial activities. We find this argument to be without merit. Judge Knapp clearly stated in his opinion that "the sole exception with which we must concern ourselves on this motion is whether defendant's act in employing plaintiff was 'a commercial activity.'" Moreover, while appellant characterizes appellee's acts as merely the hiring and firing of an employee, we note that appellant was employed by the UAE Mission to the United Nations to handle political advisory and research functions. Thus, the evident political nature of the employment mandates a finding that appellant's activity was not within the "commercial activity" exception to

sovereign immunity.

We have considered each of appellant's other claims and find them to be without merit. (A.2-3; Emphasis added.)

Reasons for Granting the Writ

I. IT WAS ERROR TO DISMISS THE COMPLAINT OF A THIRD COUNTRY NATIONAL ALLEGING A BREACH OF AN EMPLOYMENT CONTRACT BY A FOREIGN STATE, UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT, 18 U.S.C. SECTION 1602, ET SEQ., ON THE GROUND THAT THE EMPLOYEE HAD FAILED TO ESTABLISH THAT HIS ACTION WAS BASED UPON "COMMERCIAL ACTIVITY" BY THE FOREIGN STATE, WHEN IT WAS THE FOREIGN STATE'S OBLIGATION TO PRODUCE EVIDENCE OF IMMUNITY AND NO SUCH EVIDENCE WAS PRODUCED.

Because the decision of the United States Court of Appeals for the Second Circuit is in direct conflict with decisions of other Courts of Appeals and directly contravenes FSIA, certiorari should be granted. The decision of the Second Circuit directly conflicts with decisions in other circuits by incorrectly placing the burden of demonstrating lack of immunity under FSIA on petitioner. Other Courts of Appeals have consistently held that the burden of demonstrating immunity under FSIA is on

the foreign nation claiming it. Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1378 (5th Cir. 1980), Transamerican S.S. Corp. v. Somali Democratic Republic, 767 F.2d 998, 1002 (D.C.Cir. 1985), Vencendora Ocenica Navigacion v. Compagnie Nation, 730 F.2d 195, 199 (5th Cir. 1984), Alberti v. Empresa Nicaraguense De La Carne, 705 F.2d 150, 253 (7th Cir. 1983), Tigchon v. Island of Jamaica, 591 F.Supp 765, 766 (W.D.Mich. 1984), Van Dardel v. Union of Soviet Socialist Republics, 623 F.Supp 246, 251 (D.D.C. 1985), Behring International, Inc. v. Imperial Iranian Air Force, 475 F.Supp 396, 405 n.9 (D.N.J. 1979), Matter of Sedco, Inc., 543 F.Supp 561, 564 (S.D.Tex. 1982). Accord, H.Rep. No. 94-1487, 94th Cong.2d Sess. (1976), p. 17, reprinted in 1976 U.S.Code Cong.& Ad.News, 6604, 6616 (hereinafter "H.Rep")("(S)ince sovereign immunity is

an affirmative defense which must be specially pleaded, the burden will remain on the foreign state to produce evidence in support of its claim of immunity."). In its ruling, placing the burden of proof on petitioner, the Second Circuit's decision repudiated the very purpose for which FSIA was enacted (see 28 U.S.C. Section 1602, limiting immunity to non-commercial activities) and imposed a blanket sovereign immunity which has not been the law since 1952 (see H.Rep, 6613).

The FSIA, 28 U.S.C. Section 1602, et seq., adopts a restrictive view of foreign sovereign immunity and grants immunity for "governmental" acts of a foreign state. The statute, however, denies immunity for acts of a "private" nature. It is this view of immunity that translates into the "commercial activity" exceptions in FSIA. See, Verlinden B.V.

v. Central Bank of Nigeria, 461 U.S. 480, 488-489 (1983); 28 U.S.C. Section 1602 ("(S)tates are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned..."). Title 28, U.S.C. 1603(d) defines "commercial acitivity" as "either a regular course of commercial conduct or a particular commercial transaction or act," and states:

> The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

While no provision of the act defines "commercial" (see, Texas Trading v. Federal Republic of Nigeria, 647 F.2d 300, 308 (2d Cir. 1981)), the legislative history determines the appropriate result in the instant case when it states:

> Also public or governmental and not commercial in nature, would be the employment of diplomatic, civil service, or

> military personnel, but not the employment of American citizens or third country nationals by the foreign state in the United States.
>
> The courts have a great deal of latitude in determining what is a "commercial activity" for purposes of this bill. It has seemed unwise to attempt an excessively precise definition of this term, even if that were practicable. Activities such as a foreign government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of laborers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation, would be among those included within the definition. H.Rep, 6615 (Emphasis added.)

Clearly, then, the question in the instant case for the District Court on respondent's motion to dismiss was whether the respondent had borne the burden of demonstrating that even though petitioner was a "third country national (employed) by the foreign state in the United States" in what appeared from the

verified complaint to be the clerical or administrative position of "researcher" and "political adviser", the nature of petitioner's employment was nevertheless not "commercial activity."

To carry this burden respondent submitted nothing to the District Court. Respondent's initial affirmation merely made arguments of law, the supplementary affirmation claimed that there would be communication from the State Department, and the reply affirmation presented documents which showed attendance at meetings by petitioner but did not in any respect disclose the nature of his employment. Notwithstanding this obvious failure to present proof capable of sustaining respondent's burden, the District Court dismissed the complaint. And the dismissal was explicit in its focus on petitioner's obligation to demonstrate "commercial activity" in his

employment. Because of the lack of submissions before the Court, the decision could not discuss respondent's contentions about the nature of petitioner's employment or respondent's demonstration of its non-commercial nature. To the contrary, the decision stated that petitioner's argument that his employment was a "commercial activity" was "overly broad" (A.6). And the decision went on to hypothecate--nothing appears in the record to support this view-- that "plaintiff's work as a researcher and political adviser at defendant's Mission is not a commercial activity, but an essentially political form of employment peculiar to governments" (A.8; emphasis added). Because the record in this case does not even contain petitioner's job description, any conclusion about the political essence of his employment was

based on sheer surmise. Indeed, because the legislative history explained that a third country national in the United States providing foreign governments with public relations, marketing, or investment assistance was clearly engaged in "commercial activity", providing consulting services, research, and analysis of political developments to a small country-- respondent's total poplulation is approximately 300,000-- which would pay a third country national for such services could be no less commercial.

Notwithstanding the errors that led to the dismissal of petitioner's complaint, and the Second Circuit's previous statement that "(t)he determination of whether particular behavior is 'commercial' is perhaps the most important decision a court faces in an FSIA suit" (Texas Trading v. Federal

Republic of Nigeria, 647 F.2d at 308), the Second Circuit affirmed. It, too, placed the burden of establishing commercial activity on petitioner. The Second Circuit, thus, discussed petitioner's "allegation that the case falls within the commercial activity exception", petitioner's characterization of respondent's act in employing him, and petitioner's supposed activities of employment. And despite its own previous decisions which reversed jurisdictional dismissals when the record lacked affidavits made on personal knowledge to demonstrate lack of jurisdiction (see, e.g., Kamen v. A.T.&T. Communications, Inc., 791 F.2d 1006, 1011 (2d Cir. 1986)), and its own previous decisions which reversed the same District Judge when he had previously dismissed without permitting development of the record (Williams v. Kuhlman, 722 F.2d 1048,

1050-1051 (2d Cir. 1983)), the Second Circuit not only upheld the instant dismissal but expanded the District Court's surmise about petitioner's employment:

> (W)e note that appellant was employed by the UAE Mission to the United Nations to handle political advisory and research functions. Thus, the evident political nature of the employment mandates a finding that appellant's activity was not within the "commercial activity" exception to sovereign immunity. (A.2-3; Emphasis added).

This affirmance clearly misplaced the burden in FSIA cases, conflicted with decisions in other circuits, and vitiated the limitations of immunity FSIA was intended to provide. Accordingly, the Court should grant certiorari, vacate the Second Circuit's decision, and remand this case to the District Court with instructions to reinstate the complaint and deny the motion to dismiss.

Conclusion

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

DAVID SETH MICHAELS
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Route 203 at Beale Road
Spencertown, New York 12165
Tel.: (518) 392-9150

Dated: Spencertown, New York
February 9, 1987

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held in the United States Courthouse in the City of New York on the 21st day of November, one thousand nine hundred and eighty-six.

PRESENT:

HON. J. EDWARD LUMBARD
HON. ELLSWORTH A. VAN GRAAFEILAND
HON. LAWRENCE W. PIERCE,
Circuit Judges,

AHMED SROUR,

Plaintiff-Appellant,

v.

ORDER

THE UNITED ARAB EMIRATES,

86-7662

Defendant-Appellee.

Appeal from an order of dismissal of appellant's complaint in the United States District Court for the Southern District of New York (Knapp, J.).

Appellant is a foreign national who was employed by appellee The United Arab Emirates ("UAE") as a researcher and political advisor for several years. He

sovereign immunity.

We have considered each of appellant's other claims and find them to be without merit.

We affirm the judgment of the district court.

/s/
HON. J. EDWARD LUMBARD

/s/
HON. ELLSWORTH A. VAN GRAAFEILAND

/s/
HON. LAWRENCE W. PIERCE

Circuit Judges.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

UNITED ARAB EMIRATES,

Defendant.

MEMORANDUM & ORDER

86 Civ. 3319 (WK)

----------X

WHITMAN KNAPP, D. J.

Plaintiff Ahmed Srour brings this action against defendant United Arab Emirates alleging wrongful discharge from his employment with defendant's Mission in New York City. Defendant moves to dismiss on the ground, among others, of immunity under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. Section 1602 et seq. (1986). For reasons which follow we grant defendant's motion and dismiss the complaint.

The complaint alleges that

plaintiff occupied the position of researcher and "political adviser" with defendant's Mission and that he was wrongfully discharged (complaint at paragraph 6).

The Foreign Sovereign Immunities Act makes a foreign state immune from suit in a United States Court, with certain enumerated exceptions. The sole exception with which we must concern ourselves on this motion is whether defendant's act in employing plaintiff was "a commercial activity." 28 U.S.C. Sections 1630(d), 1605(a)(2). The statute defines "a commercial activity" as follows, 28 U.S.C. Section 1603(d):

> a commercial activity means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than

by reference to its purpose.

Plaintiff argues that the act of employing an individual is per se commercial since that act can be performed by private parties as well as governments. He contends that only activities whose performance is exclusively within the power of a state are protected by immunity.

Plaintiff's argument appears to be an overly broad construction of the Court of Appeals' formulation in Texas Trading v. Federal Republic of Nigeria (2d Cir. 1981) 647 F.2d 300 where it stated, "if the activity is one in which a private person could engage, it is not entitled to immunity." The "activity" here in question is more than just employment per se. It encompasses the specific type of employment in which plaintiff was engaged. See Arango v. Guzman Travel Advisors Corp. (5th Cir.

1980) 621 F.2d 1371, 1379 ("The focus of the exception to immunity recognized in 1605(a)(2) ... is on whether the particular conduct giving rise to the claim in question actually constitutes or is in connection with commercial activity.")

It is certainly possible for a foreign state to engage in employment contracts in this country which are both commercial and non-commercial in nature. Cf. Truck v. Pan American Health Organization (D.C. Cir. 1981) 668 F.2d 547 (claim arising from international health organization's supervision of its civil service personnel not commercial in nature.). We think it obvious that employment as a military attache at a diplomatic Mission would not be considered commercial, while employment as a stockbroker to invest for profit the funds of a foreign state in the New York

Stock Exchange would be commercial. Likewise, plaintiff's work as a researcher and political adviser at defendant's Mission is not a commercial activity, but an essentially political form of employment peculiar to governments and therefore entitled to immunity.

Since we find that plaintiff's employment was not commercial in nature and that defendant is immune from this lawsuit, we grant defendant's motion and dismiss the complaint.

SO ORDERED.

DATED: New York, New York
July 29, 1986

/s/
WHITMAN KNAPP,
U.S.D.J.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

UNITED ARAB EMIRATES,

Defendant.

VERIFIED COMPLAINT

86 Civ. 3319 (WK)

----------X

Now comes the Plaintiff by his attorney, Michele Forzley, Esq., and says for his complaint as follows:

1. Jurisdiction of this action is based upon 28 U.S.C.S.1330.

2. Defendant, United Arab Emirates (hereafter UAE) at all times mentioned herein is a foreign sovereign state, which maintains an office and a Mission at 747 Third Avenue, New York, New York 10017.

3. Plaintiff Ahmed Srour is a resident of the State of New York and of

the United States.

4. That this action is based upon a commercial activity performed in the United States in New York City and upon the tortious acts of and ommissions of officials and employees done within the scope of their employ and office in New York City and elsewhere.

5. Plaintiff began his employ pursuant to an oral agreement in March 1981 at the Permanent Mission of the United Arab Emirates as a local employee without a special contract in the capacity of political advisor.

6. Plaintiff was promoted to the grade of "Researcher", in the capacity of political advisor on January 1, 1984, pursuant to a Special Contract (hereafter Special Contract) of employment, and continued to function as a political advisor until July 11, 1985, when defendant terminated his employment.

A copy of the Special Contract is attached as Exhibit A. At the time of his termination, he was 44 years old and had worked for Defendant for four and one half years with approximately two weeks break in service in the summer of 1984 for vacation only.

7. The Special Contract was entered into in New York City on or about January 1, 1984 and was delivered to Plaintiff personally in New York City.

8. The Special Contract was executed pursuant to the provisions of the Local Employees Act of 1983 of the United Arab Emirates and accordingly Plaintiff was promoted to the grade of Researcher with the duties and functions of political advisor because and only after his full personal data, educational degrees and work experience had been substantiated to the Ministry of Foreign Affairs by the Permanent Mission in New

York and the Ministry was fully aware of the full description of the duties Plaintiff would undertake and the reasons for employing him under a Special Contract.

9. That the Special Contract provided for Plaintiff to perform the duties of political advisor for the State of the United Arab Emirates at their local office, the Permanent Mission located in New York City. Said Contract was renewable annually, with the last renewal occurring January 1, 1985.

10. That the Special Contract provided for the hiring of Plaintiff on an annual basis at a rate of $2,000.00 per month in compensation, forty five days vacation pay and for severance pay of one month's pay per year of work.

11. That Plaintiff performed all required services and fulfilled all conditions existing under the Special

Contract satisfactorily to Defendant at all times herein mentioned and has at all times been ready, willing and able to perform and has offered to perform all of the conditions and requirements of the Special Contract.

12. That Plaintiff performed services for the full year of 1984 and up to and including the month of July 1985 as a political advisor.

13. Plaintiff took no vacation time in 1985.

14. That on or about May 29, 1985, without the agreement of Plaintiff, nor notice to him, Defendant unilaterally changed both Plaintiff's job title and job description to one for which Plaintiff had not contracted to perform and one for which the Ministry of Foreign Affairs had not been notified nor approved of, in violation of the Local Employees Act and in breach of the

Special Contract. The unilateral change was done by the issuance by the Permanent Mission of a statement and flow chart changing Plaintiff's job from political advisor to assistant to the head of the Economic and Social Department of the Mission. Plaintiff had no experience nor education in economics or social matters.

15. That because Plaintiff could not perform the new duties, he attempted to resolve the obvious problem amicably by communicating to the Ambassador and the Charge d'Affairs in writing.

16. Despite these efforts Plaintiff was wrongfully terminated from his duties on or about July 11, 1985 without any good cause and without any misconduct. The termination was wrongful and in breach of the Special Contract in that performance by Plaintiff was wholly satisfactory. Since the date of

termination, Defendant has failed and refused to permit Plaintiff to perform under the aforesaid Special Contract.

17. That therefore, Defendant breached the Contract.

18. As a result thereof, Plaintiff has suffered substantial loss of profits and other benefits.

19. Wherefore, Plaintiff demands judgment in the amount of $21,000.00, plus interest, the costs and legal fees of his proceeding.

AS AND FOR A SECOND CAUSE OF ACTION

20. Plaintiff repeats and realleges paragraph 1-19 herein.

21. As a proximate result of Defendant's termination of Plaintiff as an employee and in discharging Plaintiff from his employment, Plaintiff's reputation as a faithful and diligent representative in the diplomatic

community has been damaged; and it has become impossible for him to obtain employment with another Mission and/or Sovereign in a position comparable with the position Plaintiff held at the time of his termination.

22. As a result of which Plaintiff has been damaged in the sum of $2,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

23. Plaintiff repeats and realleges paragraphs 1-22 herein.

24. Plaintiff relied upon the representations of the State of the United Arab Emirates in accepting employment pursuant to the Special Contract, that in approximately one year that Plaintiff would be promoted to the grade of Advisor pursuant to a Foreign Contract.

25. An advisor with a Foreign

Contract receives salary and benefits in excess of $250,000.00 per year.

26. The Ministry of Foreign Affairs of the State of the United Arab Emirates represented that pursuant to Circular 103 of 1983, that although Defendant desired to employ Plaintiff with the grade of Advisor, that it could not do so due to current financial restraints and that it anticipated doing so in about a year.

27. As a result of the wrongful termination and breach of the Special Contract, Plaintiff was damaged in the sum of $5,000,000.

AS AND FOR A FOURTH CAUSE OF ACTION

28. Plaintiff repeats and realleges all of the allegations contained in paragraphs 1-27.

29. Said conduct of Defendant was wilful, malicious and oppressive and

constitutes a fraud on the public, as well as imposing great emotional distress upon Plaintiff constituting the tort of outrage for which Defendant is responsible to Plaintiff for punitive damages.

30. As a result of Defendants wrongful termination of Plaintiff and breach of the Special Contract,, Plaintiff has sustained and continues to sustain substantial losses in earnings, and other employment benefits and has suffered and continues to suffer humiliation, mental and physical pain, and anguish, and has been ostracized from the diplomatic community all to his damage in a sum exceeding $2,000,000.00 or more.

AS AND FOR A FIFTH CAUSE OF ACTION

31. Plaintiff repeats and realleges paragraphs 1-30 herein.

32. Plaintiff was hired and promoted to the grade of Researcher based upon his education, experience and knowledge as a political advisor which position and description of duties were specifically approved by the Defendant pursuant to the requirements of the Local Employees Act.

33. The conduct of Defendant in unilaterally changing Plaintiff's job function and thus requiring Plaintiff to engage in the performance of services which were not within his experience or education, nor job description, nor Special Contract, in order to continue his employment relationship with Defendant and Defendant's termination of Plaintiff's employment relationship constituted a breach of the covenant of good faith and was oppressive, maliciaous and fraudulent and justifies the imposition of an award of punitive

damages against Defendant in favor of Plaintiff.

34. Wherefore, Plaintiff prays for punitive damages in the amount of $9,000,000.00.

Wherefore, Plaintiff prays for judgment in its favor as follows:

1. on Plaintiff's first cause of action $21,000.00, plus legal fees, interest and the costs of this proceeding,

2. on Plaintiff's second cause of action $2,000,000.00,

3. on Plaintiff's third cause of action $5,000,000.00,

4. on Plaintiff's fourth cause of action $2,000,000.00,

5. on Plaintiff's fifth cause of action $9,000,000.00,

6. and for such other and further relief as to this Court seems

just.

Respectfully,

/s/
Michele Forzley
Attorney for Plaintiff
125 Cedar Street
New York, New York 10006
U.S.A.
(212) 406-4973

Dated April 14, 1986

VERIFICATION

I, Ahmed Srour, the Plaintiff in the above captioned matter, do hereby state, that I have read the contents of the summons, the complaint and the notice of suit, and say that the contents are true to the best of my knowledge and belief.

/s/
AHMED SROUR

On the 16th day of April, 1986, before me came Ahmed Srour to me known to be the individual who signed this verification.

/s/
Notary Public

EXHIBIT "A"

STATE OF THE UNITED ARAB EMIRATES
MINISTRY OF FOREIGN AFFAIRS
(Personnel Dept.)

No. 7/6/6 --1041
Date: 11/29/1983

To the Permanent Mission of the state of the United Arab Emirates/New York.

Peace upon you and God's mercy and blessings.

In reference to your letter No. 1036/83 dated 10/10/1983, regarding Mr. Ahmed Srour.

We enclose herewith, the contractual agreement which will be concluded with him as of 1/1/84. Please type it on the Mission's official stationary, sign it and return to us the original and two copies along with the decision of terminating his service in accordance with Item three in the agreement.

It is requested that you do what is necessary to relay to us. Please do the necessary action and acknowledge.

Yours truly,

Signed by the Under-Secretary

of the Ministry of

Foreign Affairs

Copies to:-

-Personnel file
-Mission file
-General File
-Out-going file Secretarial

IN THE NAME OF GOD, THE MERCIFUL
AND THE COMPASSIONATE

STATE OF THE UNITED ARAB EMIRATES
FOREIGN MINISTRY

CONTRACTUAL AGREEMENT WITH A
LOCAL EMPLOYEE AT A
REPRESENTATIVE MISSION

On Saturday, 12/31/1983, the Permanent Mission of the State of the United Arab Emirates (New York) by its representative, the permanent representative of the State of the United Arab Emirates, as party one and Mr. Ahmed Srour, of Lebanese nationality, as party two, agreed on the following:

Item one:

Party one agrees to appoint party two in a local job (Researcher with the permanent Mission of the State of the United Arab Emirates (New York) for a monthly salary of $2000 (Two Thousand Dollars), without any periodical increases.

Item two:

Should party two wish to resign, he should submit a written notice, at least three months before the date of leaving service, otherwise the salary pay of the balance of the notice period is to be deducted from his salary. Same rule applies too, if he quits from his service, without any reasonable excuse which might have caused the termination of his service.

Item Three:

The service of party two is considered from 3/1/1981 until 12/31/1983, his end of service compensation, including vacation pay at his salary rate on 12/31/1983, should be settled on the basis of his salary.

Item Four:

Party two is entitled to a yearly vacation of 45 days.

Item Five:

The provisions of Local Employees system

at the Representative Missions of the United Arab Emirates applies regarding other terms of employment which are not included in this agreement and do not conflict with it.

Item Six:

This agreement goes into effect as of 1/1/1984 and is issued in four copies one for party two.

Party one	Party two
(sgnd)	(sgnd)

Appendix D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

UNITED ARAB EMIRATES,

Defendant.

MOTION

86 Civ. 3319 (WK)

----------X

Motion by:	United Arab Emirates (defendant)
Return Date:	Friday July 25, 1986 at 2 p.m. before Judge Knapp, U.S. District Court, Southern District of New York, Courtroom 619.
Relief Requested:	Dismissal of Complaint under Foreign Sovereign Immunity Act and Diplomatic Immunity Act.
Supporting Papers:	Attorney's Affirmation dated June 25, 1986. Complaint Memorandum of Law, and other grounds.

Answering papers
shall be served 5
days before the
Return Date.

Dated: New York, New York
June 25, 1986

/s/
OMAR Z. GHOBASHY
Attorney for
Defendant
135 West 50th St.
No. 1840
New York, NY 10020
(212) 757-1770

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

AFFIRMATION

86 Civ. 3319 (WK)

UNITED ARAB EMIRATES,

Defendant.

----------X

STATE OF NEW YORK
COUNTY OF NEW YORK

OMAR Z. GHOBASHY, an attorney admitted to practice before this court, affirms:

1. I am attorney for defendant.

2. I am fully familiar with facts herein.

3. I am making this affirmation in suport of motion to dismiss this action.

4. This Court does not have jurisdiction over defendant.

5. The action is based on

alleged contract between the Permanent Mission of United Arab Emirates to United Nations and plaintiff, a former member of this Mission. To circumvent the law, this action is not brought against the Real Party in interest, U.A.E. Mission to U.N. because the Mission is not amenable to suit because of Diplomatic Immunity under United Nations Headquarters Agreement, Treaties and laws of U.S.A. The theory of plaintiff that a Diplomatic Mission is an agent of a sovereign State and can be sued under Foreign Sovereign Immunity Act has long been rejected by the Courts. Accordingly, since this action is based on a contract between a U.N. Mission, enjoying diplomatic immunity and one of its employee, it should be dismissed, notwithstanding that the UN Mission is not named as party defendant but the Sovereign State U.A.E. is named as defendant.

6. This action is barred by F.S.I.A. (Foreign Sovereign Immunity Act). It is not within the exceptions listed in the Act regarding commercial activities. A U.N. Mission is specifically and definately considered by the courts to be a diplomatic entity exempted from suit in U.S.A. The State of U.A.E. by conducting diplomatic activities. Thus this action under F.S.I.A. is not maintainable and should be dismissed.

7. The complaint and cover sheet alleges that plaintiff is a resident of New York. The complaint must allege that plaintiff is a citizen of New York. It cannot so allege as plaintiff is not a citizen of U.S.A. Since it is clear that there is no diversity of citizenship this court lacks jurisdiction. There is no diversity in action by alien against alien or foreign

State. As the cover sheet shows, this is a contract action, and accordingly diversity must exist. There is no Federal Statute under which plaintiff refers to commence this action. Even if this is a tort action, and although it appears that no tort is commited under New York Law which is to be applied by the court, or any U.S. Law, still diversity of citizenship must exist. For this reason the action should be dismissed.

WHEREFORE, it is requested that this action be dismissed with cost, reasonable attorney's fees, and sactions for these reasons:

1. Diplomatic Immunity of the real party in interest, United Arab Emirates Mission to U.N.

2. Foreign Sovereign Immunity Act.

3. No diversity of

citizenship.

A Memorandum of Law is filed.

Dated: New York, New York June 25, 1986

/s/

OMAR Z. GHOBASHY
Attorney for
Defendant
135 West 50th Street
No. 1840
New York, NY 10020
(212) 757-1770

Appendix E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

UNITED ARAB EMIRATES,

Defendant.

AFFIRMATION

86 Civ. 3319 (WK)

----------X

STATE OF NEW YORK
COUNTY OF NEW YORK

OMAR Z. GHOBASHY, an attorney admitted to practice before this court, affirms:

1. This is in support of Motion to dismiss the action returnable 7/25/86 at 2:00 p.m. by defendants.

2. I am informed by U.S. Department of State that they will communicate directly with the Court suggesting dismissal of action on these grounds:

(a) Defective service.

(b) U.A.E. Mission is an indispensable party and immuned from suit.

(c) It is in interest of diplomatic relations that action be dismissed. I was requested to submit an affirmation to that effect.

WHEREFORE, defendant's motion to dismiss the action should be in all respects granted with costs, reasonable attorney's fees and sanctions for bringing a frivolous action, knowing that the party was not properly sued and is not subject to suit in USA.

Dated: New York, New York
July 9, 1986

/s/

OMAR Z. GHOBASHY
Attorney for
Defendant
135 West 50th Street
No. 1840
New York, NY 10020
(212) 757-1770

Appendix F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

AFFIRMATION AND MEMORANDUM IN RESPONSE

86 Civ. 3319 (WK)

UNITED ARAB EMIRATES,

Defendant.

----------X

I, Michele Forzley, Esq., counsel to Plaintiff, do hereby make this affirmation under the pains and penalties of perjury.

1. This affirmation and memorandum are submitted in opposition to Defendant's motion returnable July 25, 1986.

2. The motion of Defendant should be denied entirely as meritless, dilatory and totally unfounded under the facts and applicable law. Further, the

costs and fees incurred by Plaintiff as a result of defending this motion, should be assessed against Defendant and its counsel, as sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

THE UNITED ARAB EMIRATES IS SUBJECT TO THE JURISDICITONS OF THIS COURT

3. Not only is the sovereign state, the United Arab Emirates the proper party, it is also subject ot suit within the United States in an action such as the one at bar.

4. The case at bar is based upon a simple commercial activity carried on within the United States by the Defendant foreign state, which activity is clearly the kind of activity subject to suit pursuant to 28 U.S.C.A. s1605(a)(2). The activity is the hiring, employing and wrongful firing of Plaintiff. Plaintiff was a local employee as defined in the Local

Employees System Act, which was specifically made a part of the Contract between Plaintiff and Defendant. Therein at Article 1/3, attached as Exhibit A, it is clear that the title "local employee" includes many kinds of employment from "Drivers" to "Translators". Plaintiff's Contract refers to him as a local employee with the title Researcher.

5. Under all the tests for determining whether the basis for a suit is commercial, there can be no conclusion other than that the matter at bar is commercial. Since hiring, employing and wrongful firing are activities that can be engaged in by both private parties and sovereigns and these are the transactions complained of by Plaintiff, the basis for the suit is commercial and Defendant is not immune International Association of Machinists and Aerospace Workers v. OPEC, (D.C. Cal. 1979), 477 F.Supp. 553, aff'd

649 F.2d 1354, cert. den. 102 S. Ct. 1036, 454 U.S. 1163, 71 L.Ed. 319.

6. In order for the acts of a sovereign to be "immune" from suit, the acts must be of a public nature or those truly governmental acts McDonnell Douglas Corp. v. Islamic Republic of Iran, (CA 8 Mo. 1985), 758 F.2d 341, Verlinden B.V. v. Central Bank of Nigeria, (N.Y. 1983), 103 S. Ct. 1962, 461 U.S. 480, 76 L.Ed.2d 81. There can be no question, but that the hiring, employing and firing of a person are not public nor governmental acts. Since sovereign immunity is the exception and not the rule, the Court is constrained to take a puristic look at the substance of the lawsuit to determine the issue of whether the transaction complained of is commercial or governmental. Thus, only the nature of the activity giving rise to the claim must be considered and not the purpose of

the challenged conduct. As long as the requisite relation to the United States is present (not in issue here) the district court has subject matter jurisdiction Texas Trading & Mill Corp. v. Federal Republic of Nigeria, (CA. N.Y. 1981), 647 F.2d. 300, cert. den. 102 S.Ct. 1012, 454 U.S. 1148, 71 L.Ed. 301.

7. Defendant United Arab Emirates is also subject to suit in the United States for the tortious acts of and ommissions of officials and employees of Defendant pursuant to 28 USC 1605(a)(5) which acts and ommissions are specifically enumerated in the complaint at bar Persinger v. Islamic Republic of Iran, 1984, 729 F.2d 835, 234 U.S. App. D.C. 349, cert. den. 105 S.Ct. 247.

8. Defendant has failed to show why the case at bar does not contemplate commercial activity. Defendant merely claims that it is

exempt; this however is inadequate to meet the burden of proof imposed on the party claiming immunity Transamerican SS. v. C.N.A.N., (CA. Texas, 1984), 730 F.2d 195. Accordingly, Defendant's motion should be denied.

THE U.A.E. IS THE ONLY PROPER PARTY

9. Defendant United Arab Emirates is the proper party and the only party. The Contract between Plaintiff and Defendant (attached to the complaint as Exhibit A) clearly recites that there are two parties; Plaintiff and Defendant; Ahmed Srour and the state of the United Arab Emirates.

10. The Permanent Mission in New York is the physical embodiement of the Defendant state just as a corporate officer is the corporeal embodiement of a corporation. When the Defendant, the State of the United Arab Emirates,

decided to enter into the Contract, the Permanent Mission as the embodiement of the Defendant was directed in a cover letter by the Defendant to execute the Contract with Plaintiff. The cover letter is attached with the Contract and is part of Exhibit A to the Complaint.

When Plaintiff was wrongfully terminated, the act was done by the State of the United Arab Emirates. Exhibit B is the termination memorandum and is executed by the State and shows that the Defendnat terminated Plaintiff.

THE MISSION IN NEW YORK
IS THE UNITED ARAB EMIRATES

11. The Foreign Sovereign Immunities Act, 28 U.S.C.A. s1603 states quite clearly that a foreign state includes an agency or instrumentality of the foreign state and its missions. Indeed, it is hard to imagine a purer embodiement of a foreign state than that

state's Permanent Mission to the United Nations Gray v. Permanent Mission of People's Republic of the congo (D.C.N.Y. 1978), 443 F. Supp. 816, aff'd 580 F.2d 1044. Thus, Defendant's argument that somehow the mission of Defendant is the proper party is without merit as is the premise that the mission is somehow separate and distinct from the government of the United Arab Emirates. It is one and the same as the government.

THE U.N. HEADQUARTERS AGREEMENT DOES NOT APPLY

12. The U.N. Headquarters Agreement does not support Defendant's argument. It simply has no applicability to the case at bar.

DEFENDANT'S JULY 9TH AFFIRMATION

13. On or about July 9, 1986, Defendant and its counsel submitted an affirmation so grossly incorrect and misleading that sanctions should be

imposed against counsel and a copy of the affirmation referred to the Disciplinary Committee for inquiry into possible ethical violations.

14. The undersigned personally investigated the statements made in counsel's affirmation with the Department of State to determine their veracity. The State Department did not request that Mr. Ghobashy submit the affirmation. The position of the State Department contained in their letter to the Clerk of Court, dated July 8, 1986, is that service upon the U.A.E. Mission in New York is improper. Since service was not made upon the U.A.E. Mission in New York, the position of the Department of State is of academic use only.

DIVERSITY IS NOT AN ISSUE

15. Plaintiff will not discuss the issue of diversity as no allegation of diversity is made in the complaint.

The undersigned thanks Defendant's counsel for his illuminating discussion however on the subject.

WHEREFORE, Plaintiff respectfully prays that Defendant's motion be dismissed in its entirety and that sanctions be imposed against Defendant and its counsel for their frivolous and meritless motion.

Respecfully,

/s/

Michele Forzley
Attorney for Plaintiff
125 Cedar Street
New York, NY 10006
(212) 406-4973

Dated: July 17, 1986

EXHIBIT "A"

In the name of God the merciful, the beneficient

(Emblem of the United Arab Emirates)

THE STATE OF THE UNITED ARAB EMIRATES

MINISTRY OF FOREIGN AFFAIRS

LOCAL EMPLOYEES SYSTEM FOR DIPLOMATIC MISSIONS ABROAD OF THE UNITED ARAB EMIRATES (1983)

Financial & Administrative Dept.
(Personnel Dept.)

Ministerial Decree No. (1) 1983
To issue Local Employees System for
the Diplomatice Missions, abroad the
state of the United Arab Emirates
Year (1983)

Ministry of the State of Foreign Affairs.

After reviewing the Unification law No. 1/1972, regarding the Ministerial specializations and the Ministeries qualifications and the laws amending it,

And the Unification law No. 3/1972 regulating the Diplomatic and the Consular Corps system.

And the Unification law No. 2/1972, regulating the Ministry of Foreign Affairs.

And the Unification Law No. 1/1978, concerning the index of salaries, allowances to employees of the Ministry of Foreign Affairs.

And the Ministry of Foreign Affairs' decision about the system of local

employees at the Mission of the State of UAE.

2 - That his service was not ended by reprimand dismissal or by absence or delaying in return after vacation.

STATE OF THE UNITED ARAB EMIRATES
MINISTRY OF FOREIGN AFFAIRS

INDEX

Subject

13- Evaluating employees performance

14- Vacations

15- Assigning for official mission

16- Employees duties

THE SYSTEM DEFINITION

ARTICLE 1/1

This system is called the system of local employees at the mission of the state of the United Arab Emirates year 1983.

ARTICLE 1/2

This system includes the basis of recruiting local employees for the missions of the state of the United Arab Emirates, and regulate their employment relationship with the missions.

ARTICLE 1/3

In applying this system, the following terms donate the meaning next to them.

The Ministry : Ministry of foreign affairs

Head Office : The head office at the ministry of foreign affairs (center)

Under Secretary : The Under Secretary of state of Foreign Affairs, or who replaces him in his absence.

The mission : Any mission of the Diplomatic Missions of the state of the United Arab Emirates abroad/ Embassy/Permenant mission/ Consulate.

Head of Mission : Ambassador/Head of mission/Consulate

General/ acting Ambassador or the head of the permenant mission, or Consul General.

The system : The local employees system

The local employee : Any person employed locally for work at the mission on its separate budget.

The definition covers the following categories:

-Administrative employees, translators and clerks.

-Employees appointed by the consulate or Administrative positions by special contracts.

-General service employees, Messengers, Drivers, Guards, cooks, waiters, gardners, servants, cleaning personnel and any such others employed in such capacity.

Employment Budget

Article 2/1

Each Mission has a special annual employment budget, which indicates the following in particular -

-Definite employment

-Vacant employment

-Title and grade of each employee and salary.

Article 2/2

The number of employees in each grade should not exceed the limited number of positions in the Missions's budget.

Article 2/3

The head of Mission may, after the Minister's approval, transfer the budget allocated for a special position to another budget according to the following :

2/3/1

The reason of transfer is for the best interest of work.

EXHIBIT B

State of the United Arab Emirates
Ministry of Foreign Affairs
Finance and Administration Dept.
(Personnel Section)
No. 7/6/6/ - 2339
Date 8/14/1985 - 11/28/1405
Ministry of Finance and Industry
Best Regards:
Subject: Subjective measures regarding local employees in representative Mission (our mission in New York)

Name	Post	Type of measure	No. of measure	Date of Measure
Ahmad Srour	Local Researcher	Dismissal	11/85	7/11/85

A copy of the measure is attached

notes

Distribution
Ministry of Finance and Industry

Signed
Under Secretary of the Foreign Ministry

Our Mission
Personnel Section
Accounting Dept.

THE ARABIC TRANSLATIONS OF THESE DOCUMENTS ARE INTENTIONALLY OMITTED

Appendix G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

AHMED SROUR,

Plaintiff,

- against -

REPLY AFFIRMATION

86 Civ. 3319 (WK)

UNITED ARAB EMIRATES,

Defendant.

----------X

STATE OF NEW YORK
COUNTY OF NEW YORK

Omar Z. Ghobashy, an attorney admitted to practice law before U. S. District courts in the State of New York, 2nd and 3rd Circuits and U.S. Supreme Court affirms:

1. I am attorney for defendant.

2. I am making this affirmation in Reply to plaintiff's answering papers.

3. The answering papers show

failure to properly respond to legal issues presented in the Motion. It also illustrates lack of familiarity of attorney for plaintiff with the law and the interpretation of the Court of Foreign Sovereign Immunity Act (FSIA) and that the Court lacks jurisdiciton over the person or subject matter.

4. It is evident that despite the legal points raised, attorney for plaintiff persists in her intentional deception and therefore sanctions should be applied against her and her clients.

5. Totally not responded to is the fraudulent and intentionally raised question of jurisdiction of the Court in which plaintiff's attorney stated that plaintiff is resident of New York. The required jurisdictional statement is that the plaintiff is a "citizen" of New York, being a citizen of U.S.A., he is an alien, attempting to sue another alien a

foreign sovereign, under diversity of citizenship. That they cannot do, and on this ground alone, the action is dismissed.

6. Nor the issue of service is responded to. It appears that service was not made in accordance with Foreign Sovereign Immunity Act and accordingly this Court lacks jurisdiction on this ground.

7. Annexed to responsive papers is unauthenticated and uncertified papers purported to be some official papers. The paper we received is unsigned, incomplete and not attached to any Arabic text.

8. The alleged text refers to local employees attached to Diplomatic Missions. Thus the Mission is the employer and it is an indispensable party. While attorney for plaintiff states that Diplomatic Immunity does not

apply, and she does not know Diplomatic Immunity. She deliberately and fraudulently evaded the issue by sueing the wrong party to avoid the defense of Diplomatic Immunity.

9. Attorney for plaintiff is confused. A diplomat is not an agent of his Government in the sense that his Government waived his immunity for his acts. A diplomatic mission is a separate entity and is entitled to Diplomatic Immunity as a Mission. It carries diplomatic activities in U.S.A. and these activities are protected. A diplomat is immuned from suit even in his personal affairs, such as rent, purchase, debts. Plaintiff did not cite any authority to support her contention. Cases cited support defendant's position.

10. It is undisputed that plaintiff is a member of U.A.E. Mission to U.N. Annexed, as Exhibit "A" is list

of Delegation to General Assembly. Mr. Ahmed Srour's name appears. Exhibit "B" shows names of representatives to Ad Hoc Committee including "plaintiff". Exhibit "C" a list of delegates to U.N. Children Fund. Srour's name as adviser appears. Exhibit "D" is list of representatives. Plaintiff Srour appears. Exhibit "E" is list of UNICEF, plaintiff's name appears. Exhibit "F" is a list of representative, plaintiff's name appears. Exhibit "G" official U.N. list of diplomats accredited to U.N. Plaintiff's name is included. Exhibit "H" Document U.N. General Assembly. Srour's name appears as representative and summary of his staement on behalf of U.A.E. appears. Exhibit "I" same as above.

11. Finally attached is a Memorandum to U.S. Mission to U.N. by U.A.E. Mission.

It is clear to the Court that

this is an action by a diplomat against his Head of Mission to U.N. on a dispute relating to his assignment. That action cannot be maintained because of Diplomatic Immunity, Sovereign Immunity, and lack of jurisdiction. There is nothing in 28 U.S.C. 1330 that permits an action between two diplomats or two members of a mission to the U.N.

A Memorandum of Law is attached.

WHEREFORE, the Motion of defendant should be granted in its entirety with sanctions and costs against plaintiff and his attorney and reasonable attorney's fees.

Dated: New York, New York
July 22, 1986

/s/

Omar Z. Ghobashy
Attorney for Defendant
135 West 50th Street
Suite 1840
New York, NY 10020
Tel: (212) 757-1770

EXHIBITS INTENTIONALLY OMITTED

NO. 87-1344

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

AHMED SROUR,

Petitioner,

—v.—

THE UNITED ARAB EMIRATES,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SECOND CIRCUIT

Omer Z. Ghobashi
Attorney for Respondent
122 East 42nd Street
Suite 1117
New York, NY 10168

Tel.: (212) 557-3720/1/2

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

SUPREME COURT OF THE UNITED STATES

AHMED SROUR,

Petitioner,

-against-

UNITED ARAB EMIRATES,

Respondent.

BRIEF OF RESPONDENT

QUESTIONS PRESENTED

1. Is this action barred by Foreign Sovereign Immunity Act, not being a commercial activity? The courts below answered this in the affirmative.

2. Is this action barred by Diplomatic Immunity in that U. A. E. Mission to U. N. and its Ambassador are indispensable parties, and should the action be dismissed in absence of U. A. E. Mission and its Ambassador as parties?

3. Should the cause of action for punitive damages against a foreign sovereign state be dismissed?

4. Should the action be dismissed for defective service and failure to serve Notice of Appeal?

STATEMENT

No Notice of Appeal was ever served on attorney for Respondent or the Government of United Arab Emirates. The service of Notice of Appeal is essential in any action, and is statutorily necessary under Foreign Sovereign Act.

Since the Government of the United Arab Emirates was not provided with Notice of Appeal in accordance with Federal Rules of Appellate Procedure and Foreign Sovereign Immunity Act which provides special procedure for service of papers, there was no appeal pending before the Second Circuit, and the Appeal should be dimissed on that ground. United Arab Emirates V. 40 D6252, 447 F. Supp. 710 (Weinfeld, D. J.), 28 U. S. C. A. 1608.

Although Petitioner had obtained the consent of attorney for Respondent to include in the Record Respondent's response to the Motion, the Reply of Respondent and State Department intervention, they included only their affirmation which was not docketed.

Respondent never consented to delete the Arabic text which will show no signature and no contract and that it does not conform to the English text and it is not authenticated. While the English text claims that certain documents are signed, the Arabic text is not attached to show if in fact they are signed. The Arabic text attached to the Complaint shows that alleged documents are not signed.

The Second Circuit granted leave to file supplementary appendix. Yet, Petitioner again omitted important documents which were part of Record below.

The Petitioner was appointed by United Arab Emirates Mission to the United Nations as an official on March 1, 1981 at a salary of $1,200.00 monthly. This employment was terminated on December 31, 1983 and he was appointed as a researcher and political advisor on January 1, 1984 at a salary of $24,000.00 annually. He was assigned various functions at committees in the United Nations representing United Arab Emirates. The Reply Affirmation intentionally ommited by attorney for Petitioner contains the various assignments of Mr. Srour and his listing as a delegate by United Nations.

The Ambassador to the United Nations assigned him to an Economic Committee. Petitioner refused. He absented himself without cause or permission and was discharged for cause on July 11, 1985 in accordance with United Arab Emirates Rules and under which he was employed.

Since he was an employee of United Arab Emirates Mission to the United Nations and clearly admitted in the Complaint, the United Arab

Emirates Mission to the United Nations is an indispensable party. However, because of diplomatic immunity, Petitioner devised a method to circumvent the Diplomatic Immunity Act by attempting to sue United Arab Emirates, a foreign sovereign state. The function of the Mission to United Nations or Embassy ot the United States of America is not a commercial activity. Thus this action was properly dismissed under Foreign Sovereign Immunity Act, by the United States District Judge, and unanimously affirmed by United States Court of Appeals, Second Circuit.

The Complaint admits:

1. Srour was employed by U. A. E. Mission to U. N.
2. He refused an assignment by the Ambassador of U. A. E.
3. He was discharged by U. A. E. Ambassador to U. N.
4. He carried functions for U. A. E. Mission at various committees of U. N.
5. Diversity is not raised and the case rests exclusively on Foreign Soverign Immunity Act.
6. Srour is claiming certain rights under U. A. E. Laws which are only applicable in U. A. E.

7. The Complaint on its face shows lack of jurisdiction of this Court.
8. The Complaint does not show a cause of action in contract or tort.

Judge Knapp dismissed the Complaint on lack of commercial activity exception, and did not pass on the many other grounds raised. The U. S. Court of Appeals, Second Circuit affirmed.

PROCEDURE BELOW

Respondent moved to dismiss the Complaint under Foreign Soverign Immunity Act. The Docket sheet contains under #9 filing Notice of Appeal on August 4, 1986, but there is not affidavit of service on Respondent or their attorney. No Notice of Appeal was served on attorney for Respondent. On August 8, 1986 there is a notation that Notice of Appeal was forwarded to District Judge.

The Appeal is from "Memorandum and Order" and was entered on August 1, 1986.

A Judgment was entered on August 1, 1986. This Judgment was not served on Respondent or his attorney, and no Appeal was taken from the Judgment. The Judgment refers to date of Order as

July 30, 1986. The Judgment is dated July 31, 1986 and entered August 1, 1986.

POINT I

THE APPEAL SHOULD BE DISMISSED FOR FAILURE TO SERVE NOTICE OF APPEAL FROM MEMORANDUM AND ORDER TO TAKE AN APPEAL FROM JUDGMENT THAT WAS ENTERED

Rule 25 (b) of Federal Rules of Appellate Procedure states:

> (b) Service of All Papers Required - copies of all papers filed by any party and not required by these rules to be served by the Clerk, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

No service was made of Notice of Appeal on counsel.

Article (d) reads:

> Proof of Service - papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and the name of persons served, certified by the person who made service. Proof of service may be filed without

acknowledgement or proof of service but shall require such to be filed promptly thereafter.

No proof of service was filed. Attorney for Petitioner was under the impression that she had to file Notice of Appeal with clerk of District Court, pursuant to Rule 4 of the Federal Rules of Appellate Procedure, but not to serve it on counsel for Respondent.

The Notice of Appeal was taken after the entry of the Judgment, but was not taken from the Judgment. Thus, Rule 4 (2) does not apply and the appeal from a decision - order cannot be treated as filed after entry of Judgment.

The Notice of Appeal on the Docket sheet was filed on August 4, 1986. The Judgment was entered on Docket sheet on July 31, 1986.

On August 8, 1986, there is an entry in Docket sheet that the Notice of Appeal and Docket entries were forwarded to Distirct Judge. There is no entry for proof of service of Appeal from Order.

The service of Notice of Appeal, although essential in all cases, is required in cases arising under Foreign Sovereign Immunity Act. Although the Act provides for special method of

service on foreign states, it is silent as to service of Notice of Appeal.

The Act's intention was to give adequate service to the foreign state, Notice of Suit, translation in its language, and other safeguards. Both Respondent and U. S. Department of State had raised the issue that original service of Summons and Complaint was defective.

POINT II

THE SERVICE OF SUMMONS AND COMPLAINT IS DEFECTIVE

Foreign Sovereign Immunity Act (FSIA), 28 U. S. C. 1608 provides for method of service on foreign states.

There is no affidavit of service alluding that service cannot be made in accordance with applicable international convention on service of judicial papers, 20 UST 361, TFAS 6638 (1969). The Docket sheet refers to "served: not legible".

Date of service is not known. No reference is made to Notice of Suit or any Arabic translation.

There is no proof of service or compliance with FSIA.

There is no mention of service of notice of document listed including FSIA. While the Notice of Suit refers to a docket number, there is no number A-17, A-4. The Complaint and Notice of Suit are not signed by attorney for Petitioner, A-11, A-18.

The Petitioner erroneously considered U. A. E. Mission to U. N. as agent of U. A. E. with regard to this action. In Gray V. Permanent Mission of Congo to U. N., 443 F. Supp. 816 (S. D. N. Y. 1978), aff. 580 F 2nd 1044 (2nd Cir.), it was held that a permanent mission to U. N. was a "foreign state" and not merely an agency or instrumentality of a foreign state and service under 28 U. S. C. 1608 (1) and (2) was not complied with.

POINT II

THE EMPLOYMENT OF A MEMBER OF A MISSION TO U. N. IS NOT COMMERCIAL ACTIVITY

It is clear from legislative history and court decisions that the conduct of foreign affairs, the maitenance of a diplomatic mission, is not within the commercial activity exception, but the essence of government political activity.

The use of Libyan Mission to U. N. was held to be governmental activity and not commercial activity. City of Edgewood V. Libya (3rd Cir., 1985) 773 F. 2nd 80.

See Carvey V. National Oil Corp. (2nd Cir., 1979). 295 F. 2nd 673, where act of state doctrines was applied and Libya was held to be immuned. In Friedar V. Israel, 614 F. Supp. 395, act of state doctrine was applied. In Arango V/ Guzman Traver Advisors Corp. (5th Cir.) 1980, 621 F. 2nd 1371, the court held that airline employees are agents of Government of Dominican Republic in their performance of their official governmental duties, and tort action was dismissed.

The U. S. Court in its Memorandum, quoted from this case, states: "The focus of the exception to immunity recognizec in 1605 (a) (2) ... on whether the particular conduct giving rise to the claim in question actually constitutes or is in connection with commercial activity." The activity of the Sovereign here is not hiring or firing, it is not an employment agency, but the activity is the conduct of foreign affairs, and the political activity of representation at United Nations as a member state.

In Castro V. Saudi Arabia, (D. C. Texas, 1980), 510 F. Supp. 309, it was held that employment contract for training of personnel is governmental and not commercial and Saudi Arabia was immuned.

In De Sanchez V. Banco Central de Nicaragua (5th Cir., 1985) 770 F. 2nd 1385, the U. S. Court of Appeals held, where a government eneters a contract, in ascertaining commercial activity exception [28 U. S. C. A. # 1605 (a) (2)], two questions are involved: first, the relevant activity must be defined with precision, which requires focusing on acts of named defendants; second, it may be determined if the relevant activity is sovereign or commercial, a label which depends on nature of activity. Thus issuance of checks was sovereign.

In Gibbons V. Ireland (D. C. 1982) 532 F. Supp. 648, the Court held that immunity of foreign states is the rule not an exception and courts must respect the immunity of foreign sovereigns unless some exception to the rule of Sovereign Immunity is clearly warranted.

West Indies Central Labor Organization, was an arm of a sovereign state, and participation in terms and conditions of workers was not commercial

activity and was held immuned. Rios V. Marshall, (S. D. N. Y. 1981) 530 F. Supp. 351, Judge Gagliasdi.

In Pratical Concepts V. Bolivia, 613 F. Supp. 863 (D. C. 1985), Judge Parker, the Court held that Congress left the definition of commercial activity to courts, and concluded that the contract includes numerous terms that only a sovereign state could perform (p. 869).

In another action where a wife sued for distress (as in this action), the action was dismissed on immunity. Frolova V. Soviet Union (7th Cir. 1985) 761 F. 2nd 370.

The Court described governmental activity as acts or decisions made at policy making or planning level of government, and stated that those acts or omissions of fundamental governmental nature are not actionable. Olsen V. Mexico (9th Cir. 1984) 729 F. 2nd 641 Cert. den. 105 S. Ct. 295.

In Skern V. Brazil (D. C. 1983), 566 F. Supp. 1414, the Court held that it has no jurisdiction to redress wrong suffered at hands of foreign diplomats.

The Complaint refers to action of U. A. E. Ambassador in transferring Petitioner and in discharging him for failure to obey his orders and refusal to perform services and absenting himself without permission.

Judge Cannella, in Texas Trading Corp. V. Central Bank of Nigeria (S. D. N. Y., 1980) 500 F. Supp. 500, dismissed a complaint for lack of subject matter jurisdiction and personal jurisdiction, FRCP 12 (b) (1) (2); 647 F. 2nd 300 (2nd Cir. 1981).

Judge Kevin Duffy dismissed a similar complaint, Gibralter Petroleum Corp. V. Bank Sepah, 526 F. Supp. 561, a claim between foreign national and a foreign state. Canadian Overseas Ores Ltd. V. Campania De Acero Del Pacifico, 528 F. Supp. 1337, (1984 - Judge Lasker), affirmed, 727 F. 2nd 274 in a claim for injury, [28 U. S. C. 1605 (a) (2)], the complaint was dismissed, and held that a foreign national cannot sue a foreign state for breach of contract not governed by Federal Law. Gemeni Shipping Inc. V. Foreign Trade Organization and Syrian General Organization (Judge Pollack, 1980), 496 F. Supp.

Even a contract by Bangladesh to purchase and export monkeys was held to be governmental as it

is in regulation of wild life, and activity of a sovereign. Mol. V. Bangladesh (Or. 1983) 572 F. Supp. 79. Aff. 736 F. 2nd 1362, Cert. denied 105 S. Ct. 513.

If purchasing monkeys is not considered commercial activity, why should the employment of a diplomat be considered commercial activity? If the U. A. E. had employed a monkey, it would not be considered commercial!

See International Association of Machinests V. OPEC (D. C. Cal. 1979), 477 F. Supp. 553. The action was dismissed under FSIA. We are unaware of a private party, being a member of U. N. membership is only open to sovereign states under U. N. Charter. The conduct of foreign affairs and representation to United Nations is not open to private persons. The Court held that the activities of OPEC members are not commercial activities and held that defendants are entitled to immunity under 28 U. S. C. 1604 and the Court lacks jurisdiction, 28 U. S. C. 1330 (a). The Court stated on page 567 that to determine if activity is commercial or governmental, it should examine standards recognized under International Law. International Law recognizes states only as members of United Nations.

It must be realized that the FSIA is grounded in the history of State Department's attempts to regularize our Court's treatment of foreign state agencies. The basic distinction is between "governmental" and "commercial activity. The immunity of a foreign state is "restricted" to suits involving a foreign state's public acts (Jure Imperii) and does not extend to suits based on its commercial or private acts (Jure Gestionis) H. R. Rep. No. 94, 1487, 94th Congress 2nd Sess. 13, reprinted in (1976) U. S. Code Cong. and Admin. News, Page 6604-5.

As to the statement as to third country nationals, this can hardly apply to Arab states, where the State Department can list a number of Ambassadors who are nationals of another Arab state. Many members of Arab Missions to U. N. are nationals of other Arab states. These nationals, such as Petitioner, are listed in U. S. documents and are recognized as representatives. The list of U. A. E. Mission to U. N. was submitted and approved by U. S. Government. It contains the name of Petitioner. Furthermore, the exact status, nationality or permanent residence status of Petitioner is not submitted or proved. In absence of proof, he is stateless.

Since diversity is not raised, he is referred to as a resident of New York, a misleading statement. There must be a distinction between any employment in U. S. A. and employment in a mission to U. N. Embassy or Consulate which are entitled to Diplomatic Immunity. Petitioner claims to be a civil servant governed by Ruels of U. A. E. He attended U. N. meetings and spoke as representative of U. A. E.

POINT IV

THE COURT LACKS JURISDICTION OVER SUBJECT MATTER

The Complaint refers to United Arab Emirates (U. A. E.) as a foreign sovereign state, which maintains an office and a mission at 747 Third Avenue, New York, New York 10017. Thus the action is definitely against the U. A. E. Mission to U. N. on Petitioner's theory that a mission to U. N. is the agent of the state.

The Complaint defines Petitioner as resident of the State of New York and U. S. A. Obviously an attempt is made to mislead the Court in the use of this term to indicate a citizen of New York. It states the jurisdiction is invoked under 28 U. S. C. 1330. There must be specific reference to 28 U. S. C. 1330 (a) to invoke jurisdiction, as 28

U. S. C. 1330 invokes jurisdiction including diversity. Failure to specifically refer to the section of the statute under which jurisdiction is invoked is fatal and the Complaint should be dismissed on this ground.

Even the substance law is defective as the alleged contract is oral and alleged tort is "distress", both not maintainable in New York.

The following are comments on Ver Linden B. V. V. Central Bank of Nigeria:

The case involved commercial activity. A contract with Nigeria for purchase of cement, and a letter of credit. The petitioner sued the Bank for anticipated breach of letter of credit. Petitioner alleged jurisdiction under FSIA, 28 U. S. C. 1330 (a). The District Court while holding that FSIA permitted actions against states, dismissed the action on ground that none of exceptions existed.

The Second Circuit affrimed, but on ground that FSIA exceeded the scope of Act II of Constitution which provided, in part, that the judicial power of U. S. A. extend to all cases arising under the Constitution, the Laws of U. S. A., and the treaties made under their authority

and to "controversies between a state or a citizen thereof, and foreign states, citizens, or subjects." The Court held that neither the diversity clause nor "Arising Under" clause of Act III is broad enough to support jurisdiction over actions by foreign plaintiffs against foreign sovereigns.

The Supreme Court held that for the most part FSIA codifies as a matter of Federal Law, the restrictive theory of Foreign Sovereign Immunity under which immunity is confined to suits involving foreign sovereign's acts. If one of the specific exceptions to Sovereign Immunity applies, a Federal District Court may exercixe subject-matter jurisdiction under 1330 (a), but if the claim does not fall within one of the exceptions, the Court lacks this jurisdiction.

The remand was because the Court of Appeals in affirmation on other grounds did not find it necessary to address the satutory question of whether the action fell within any sepcified exception to Foreign Sovereign Immunity. Thus the U. S. Supreme Court was faced with a situation in which District Judge Weinfeld, 488 F. Supp. 1284 (S. D. N. Y., 1980) found that none of exceptions of FSIA applied and dismissed the action though he

found that FSIA permitted an action by a foreigner against a foreign state. Had the Court of Appeals affirmed on opnion of Weinfeld, there is no question that the case would not have gone to the Supreme Court. However, the Court of Appeals affirmed on other grounds. They need not reach this ground if they agreed that FSIA did not apply. That is the reason the case was remanded specifically to determine that issue.

The Supreme Court did not reverse the dismissal of action by Judge Weinfeld on non-existence of exception. Certainly, if the Court finds that FSIA does not apply, it will not reach the remainder of arguments raised.

The Supreme Court clearly stated at page 493:

> The Statute must be applied by the District Courts at every action against a foreign sovereign, since subject matter jurisdiction in any such action depends on the existence of one of the specified exceptions to Foreign Sovereign Immunity 28 U. S. C. 1330 (a).

And on page 497:

> If a court determines that none of the exceptions to Sovereign Immunity applies, the plaintiff will be barred from raising his claim in any court in U. S. A.

And on page 498:

> In the present case, the District Court, after having satisfied istself to constitutionality of the act, held that the present action does not fall within any specified exception. The Court of Appeals, reaching a contrary conclusion as to jurisdiction.

We do not know the exact status of Petitioner, if he is stateless, as it is not stated in the Complaint of what country he is national or citizen, nor do we know of his immigration status. He cannot be a resident of U. S. A., and employed in foreign missions, enjoying privileges and immunity. Petitioner in Complaint is referring to jurisdictional statute 28 U. S. C. 1330, instead of FSIA 28 U. S. C. 1603-1611.

Checking the Record of U. S. Court of Appeals after remand by U. S. Supreme Court, Ver Linden V. Central Bank of Nigeria, 647 F. 2nd 320, (2nd Cir., 1981), was dismissed with prejudice on March 6, 1984 and mandate issued on March 26, 1984. Docket (80-7413).

Accordingly, the affirmance by U. S. Court of Appeals, the remand and dismissal by U. S. Court of Appeals affirms the order of District Judge who dismissed the action.

POINT V

THE DISTRICT COURT CANNOT ASSESS PUNITIVE DAMAGES AGAINST FOREIGN SOVEREIGN STATES AND THAT CAUSE OF ACTION CANNOT BE MAINTAINED

Petitioner is seeking punitive damages against United Arab Emirates and United Arab Emirates Mission.

It was held that the District Court cannot assess punitive damages against a foreign state.

Judge Pierce, sitting at U. S. District Court of S. D. N. Y. denied punitive damages against an instrumentality of a state. Decor by NIKKI Inter. V. Nigeria, 497 F. Supp. 893 (1980). It is stated in 28 U. S. C. S. # 1606 that a foreign state shall not be liable for punitive.

POINT VI

VENUE IS BASED ON ACTION AGAINST UAE MISSION IN NY

Petitioner is admitting that venue is established under 28 U. S. C. 1391. He brought the action in S. D. N. Y on premises that U. A. E. Mission to U. N. is the party, and an agent or instrumentality of U. A. E.

Had the action been brought against U. A. E., it was to be brought in Washington, D. C. [28 U. S. C. 1391 (d)].

Since Petitioner admits that juridiction is not based on diversity, he chose venue on basis of resident of all defendants, or where action arose, and they point to United Arab Emirates Mission to United Nations, and its Ambassador, who are indispensable parties, and since adding them as party defendants will destroy jurisdiction, the action should be dismissed on this ground. Shield V. Barro (1854) 11 How. 29, 15 L. Ed. 159, Minner V. South Pacific, (9th Cir., 1938). 98 F. 2d 913.

CONCLUSION

The Petition for Certriori should be denied.

Dated:
New York, New York
March 11, 1987

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